

MILWAUKEE COUNTY CIVIL SERVICE COMMISSION
DISCIPLINARY HEARING PROCEDURES

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STATUTORY REFERENCE

The Civil Service Commission Hearing Procedures are established pursuant to Wisconsin State Statutes Chapter 63.10 and 63.12 and the Civil Service Rules of Milwaukee County.

The Civil Service Commission ('Commission') delegates its hearing authority to one or more Hearing Examiners to conduct hearings as agents of the Commission. The Commission may also delegate its hearing authority to a sub-committee, which shall be no less than three members of the Commission, to conduct hearings. Any reference hereafter to "Hearing Examiner" thus will include either the Hearing Examiner or the sub-committee. The Commission may authorize parties to be represented by counsel during the hearings.

Section 1. Filing of Charges

All written charges for discharge or demotion and notices of suspension must be filed with the Civil Service Commission administrative offices within three business days¹ after discipline has been taken that is within the jurisdiction of the Commission. All written charges or notices of suspension shall be filed at the Civil Service Commission administrative offices during regular business hours.

For written charges of discharge, the superior officer or Director of Human Resources may suspend a person in the classified service pending review of the charges, provided that the complaint indicates that such a suspension has been imposed. Such suspension will be continued, honored, and granted until the matter is decided by the Commission.

If written charges are not timely and properly filed, the Commission may dismiss the charges and reinstate the employee with back pay.

Section 2. Scheduling of Hearings

A. Hearing Within 21 Days Unless Continued/Adjourned

Upon receipt by the Commission of a complaint, the Commission shall set a time and place for a hearing. The hearing shall be held within 21 days of the receipt of the complaint or request, unless the hearing is:

- 1) Laid over by stipulation of all parties.
- 2) Laid over in the interest of fairness upon the Commission's own motion.
- 3) Laid over upon motion of the charged party.

B. Continuations/Adjournments Made by the Commission

The Commission or the Hearing Examiner may make a determination to continue/adjourn the matter.

C. Notice to Parties of Hearing and Adjournments

Notice of hearing date and any adjournments thereof shall be given to the person filing the charges and the employee. If a legal representative or union representative appears on behalf of a party, notices shall be given to the representative who shall have the responsibility to convey notice to the party.

¹ A "business day," as used in these rules, is defined as a day that the Civil Service Commission staff office is open for business. If any deadline falls on a non-business day, the deadline rolls to the next business day. When calculating time periods stated in days under these rules, exclude the day of the event that triggers the period.

Failure of the party's representative to convey notice to the party shall not constitute grounds for delay of any action by the Commission or Hearing Examiner.

Adjournments of any hearing may be granted upon written request that is received by the Commission at least two business days before the scheduled hearing date. Such written request must specify the reasons therefor and shall contain a date when the person making such request will be ready to proceed. If timely received, the Secretary to the Commission can approve such requests. If the Commission approves such request, it shall set another date for the hearing. If it does not agree to the adjournment, the hearing shall proceed as scheduled. Any request for adjournment not made in compliance with this section will be considered by the Commission or the Hearing Examiner on a case-by-case basis at the time such request is made.

D. Notice to Witnesses

Each party is responsible for advising the party's own witnesses of any continuance or adjournment.

Section 3. Amendments to Charges

Amended charges must be submitted to the Commission in writing and the opposing party may object to their submission. If the objection is sustained by the Commission, the Party requesting to amend the charges may file them as new charges. Charges may be amended to cure technical defects or to clarify or amplify allegations in the charges or to set forth additional facts or allegations related to the subject matter of the original charges. Amended charges, with the exception of technical defects, must be submitted at least 14 days prior to the scheduled hearing.

Section 4. Hearing Proceeding Before a Hearing Examiner

The Hearing Examiner shall conduct the hearings pursuant to the Hearing Procedures herein.

Section 5. Admissibility of Evidence

The Hearing Examiner, as an agent of the Commission, is not bound by the rules of evidence as contained within the Wisconsin Statutes. Evidence that the Hearing Examiner deems irrelevant, immaterial, or unduly repetitious will be excluded. Hearsay evidence will be admissible and given whatever weight or credence the Commission members wish such evidence to have. Summaries of records shall not be admissible as evidence unless the records from which the summaries are compiled are made available for examination by opposing parties, the Hearing Examiner, and the Commission members. A hearing will not necessarily be delayed for purposes of allowing opposing parties to view the records upon which the summaries are compiled. If these records are not reviewed until after the hearing and discrepancies are found, a party may petition for a rehearing pursuant to Section 16.

Section 6. Examination of Witness

A witness shall be examined first by the party who calls the witness. Each party may subpoena witnesses to attend the hearing. Witnesses may be allowed to testify either by answer to questions, or in the absence of counsel, in the narrative form. Cross-examination of a witness is not limited to those matters to which a witness testified to on direct examination. Direct and cross-examination shall not be interspersed with argument or commentary by the questioner.

Witnesses may be sequestered at the request of either party, or upon direction of the Commission or the Hearing Examiner. The Commission or Hearing Examiner may adjourn the hearing to take additional evidence.

Section 7. Exhibits

All exhibits shall be marked and made available to the opposing party and the Hearing Examiner before being shown to any witness. It is recommended that copies of all exhibits be given to the Hearing Examiner and opposing parties before the witness to whom the exhibits relate is called to testify. Original exhibits entered into the record are to be given to the Secretary to the Civil Service Commission who shall be the custodian of the file. In the event such exhibits are withdrawn, copies of such exhibits shall be submitted to the Secretary to the Civil Service Commission and be maintained in the file.

Section 8. Order of Testimony

In all cases, excepting a petition for rehearing, the charging party shall proceed first with their evidence. The person charged in the complaint shall then have an opportunity to present evidence in defense of any charges. Further evidence, in the nature of rebuttal, shall be allowed by the Hearing Examiner upon motion of the party requesting the opportunity to present such evidence. In the case of a petition for rehearing, the party who filed the petition shall proceed first followed by the opposing party thereafter. Any further evidence in the nature of rebuttal shall be granted at the discretion of the Hearing Examiner.

Section 9. Legal Briefs

The Commission or the Hearing Examiner may request or allow parties to submit legal briefs or memoranda in support of their respective positions. When such briefs or memoranda are requested, seven copies shall be submitted to the Secretary of the Commission and one copy to each opposing party. At the time legal briefs or memoranda are requested, the Commission or the Hearing Examiner may set a schedule for filing of same.

Section 10. Burden of Proof

The party who brings charges or petitions for a rehearing shall have the burden of proving their allegations by the preponderance of evidence on all complaints or petitions.

Section 11. Motions

Any party may move at any time to dismiss the case on the grounds that the Civil Service Commission does not have jurisdiction of the person or subject matter of the charges. The Commission may raise issues relating to its jurisdiction to hear a matter on its own motion. Each party shall be afforded an opportunity to make written and/or oral arguments regarding the motion. The Hearing Examiner may continue to hear a case on the merits and present motions to dismiss and/or arguments about jurisdiction to the Commission thereafter.

Unless made during a hearing, an application to the Commission or the Hearing Examiner for an order shall be by written motion that states with particularity the grounds therefor, and the relief or order sought. If the motion is made during the hearing, an oral motion can be made to the Commission or the Hearing Examiner.

Section 12. Withdrawal of Charges

A. When Charges May be Withdrawn

Subject to approval of the Commission or the Hearing Examiner, the charging authority or his/her representative may withdraw a case at any time prior to a matter proceeding to hearing.

B. Reinstatement of Employee upon Withdrawal of Charges

If an employee was suspended without pay prior to the withdrawal, said employee shall be reinstated as of the date of suspension.

Section 13. Dismissal of Charges

Any dismissal order issued by the Commission or the Hearing Examiner shall be on the merits unless otherwise expressly stated. The Commission may request the filing of a copy of any settlement prior to dismissing a case.

Section 14. Final Determination

The Hearing Examiner shall present proposed findings and recommendations to the Commission at a noticed meeting of the Commission. The Commission shall make a final determination and may adopt or modify, in whole or in part, or reject the proposed findings and recommendations of the Hearing Examiner. As provided in State law, the Commission may convene in closed session to review the record and the report of the Hearing Examiner. The Commission will reconvene in open session to make a final determination.

In the circumstance the hearing is heard by the sub-committee, following the hearing the sub-committee may convene in closed session or schedule a separate noticed meeting to draft preliminary findings and recommendation. Subsequently, the proposed findings and recommendation will be presented to the entire Commission for final adoption and approval.

Section 15. Reevaluation Period

In addition to those sanctions authorized by Wisconsin Statutes Section 63.10(2), the Commission, at its option, may provide for an employee reevaluation period imposed upon the party(ies) if the Commission determines that charges filed against the employee were well-founded and the facts and circumstances of the case dictate the remedy's use.

The length of the employee reevaluation period and the employee conduct to be rectified during that period will be decided, identified, set forth, and disclosed to the parties by order of the Commission upon approval or imposition of the employee reevaluation period. A decision detailing the conduct for which an employee may be separated without recourse to the Commission will be made in each case where the Commission approves or imposes a reevaluation period in accordance with this rule. The employee reevaluation period shall provide the employee an opportunity to rectify the conduct delineated by the Commission so as to conform to the standards required by county management for such conduct, and the employee shall be on notice from the time of approval or imposition of the employee reevaluation period that failure to rectify said conduct to the satisfaction of county management may result in the employee's being separated from county employment by the appointing authority at any time during the employee reevaluation period. Such separation during the employee reevaluation period shall be without further review by the Commission. In the event the appointing

authority does separate the employee prior to completion of the employee reevaluation period, it shall submit to the Commission a written statement giving the date and reasons for such separation.

The employee reevaluation period shall not affect the employee's status as it relates to working conditions, employee benefits, or those protections afforded under the Wisconsin Statutes Section 63.10 that are unrelated to the conduct for which the PRB has approved or imposed the employee reevaluation period.

The above Reevaluation Period differs from a Last Chance Agreement, which is negotiated between the parties who then request that the Commission accept the provisions presented either orally or in writing to the Commission.

Section 16. Rehearings

Petitions for rehearing of persons discharged must be filed with the commission within two (2) weeks after the original final order been entered. Such petition shall be granted only where it is shown that evidence can be presented which the petitioner could not by the exercise of diligence have discovered and submitted at the original hearing or investigation, which evidence would have been sufficient if there presented to have changed the findings of the investigating officer or board. The petition shall state the grounds upon which it is based, verified by affidavit.